

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

Date of Notice: April 15, 2011

Public Notice Number: 2011-27

Comment Period: May 16, 2011

Action: Notice of Proposed Assessment of Clean Water Act Section 309(g) Class II

Administrative Penalty and Opportunity to Comment

EPA is authorized under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under Section 309(g), any person who, without authorization, discharges a pollutant to a navigable water, as those terms are defined in Section 502 of the Act, 33 U.S.C. §1362, may be administratively assessed a Class I civil penalty of up to \$37,500, or a Class II civil penalty of up to \$177,500, by EPA. Class I and Class II proceedings for Section 309(g) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits"(40 Code of Federal Regulations Part 22) which was published in the Federal Register at Volume 64, Number 141, pages 40138 to 40190. The Federal Register is available at most libraries. These Rules are also available at <http://www.epa.gov/oalj/rules/crop.pdf>

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in these Rules. The

deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

Pursuant to Section 309(g)(4) of the Clean Water Act, 33 U.S.C. §1319(g)(4), EPA is providing public notice of the following proposed Class II administrative penalty assessment:

Names and addresses of Respondents:

Dependable Towing & Recovery, Inc.

2160 Lafayette Street

P.O. Box 266

Falconer, New York 14733

and

David A. Whitehill

2160 Lafayette Street

P.O. Box 266

Falconer, New York 14733

Location of alleged violations:

Wetlands adjacent to Cassadaga Creek

Town of Ellicott

Chautauqua County

New York

Nature of alleged violations: The unlawful discharge of fill material in navigable waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a), without prior authorization from the U.S. Army Corps of Engineers as required by Section 404 of the Act, 33 U.S.C. §1344.

Proposed penalty: Up to \$177,500.00

Class of Penalty: Class II

Name of Case: In the Matter of Dependable Towing & Recovery, Inc., and David A. Whitehill

Docket Number: CWA-02-2011-3601

Date filed with Regional Hearing Clerk: [04/08/2011]

Name, mailing address, and telephone number of Regional Hearing Clerk:

Ms. Karen Maples

Regional Hearing Clerk

U.S. Environmental Protection Agency

290 Broadway - 16th Floor

New York, New York 10007-1866

(212) 637-3247

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Rules and the administrative Complaint and Notice of Proposed Assessment for a Class II administrative penalty, or review the public record for this proceeding or other documents related to this proceeding, should contact the Wetlands Enforcement Coordinator, David Pohle, at U.S. EPA, Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866, telephone (212) 637-3824, fax (212) 637-3889. The public record for this proceeding is at the address given above, and is available for public inspection during business hours.

TO COMMENT: Persons wishing to comment upon the proposed penalty assessment should direct comments to Ms. Karen Maples, Regional Hearing Clerk, U.S. EPA, Region 2, 290 Broadway, 16th Floor, New York, NY 10007-1866, with a copy of such correspondence to David Pohle at the address given above.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to forty (40) days after issuance of this notice.